

BUREAU OF AUTOMOTIVE REPAIR  
INITIAL STATEMENT OF REASONS

**HEARING DATE:**

**NORTHERN CALIFORNIA**

Thursday, May 1, 2014 at 9:00 a.m.  
Department of Consumer Affairs  
Hearing Room  
1625 North Market Boulevard  
Sacramento, CA 95834

**SUBJECT MATTER OF  
PROPOSED REGULATIONS:**

Consumer Assistance Program - Administrative  
Terms and Participation Eligibility

**SECTIONS AFFECTED:**

§§ 3394.2, 3394.3, and 3394.4 of Article 11,  
Chapter 1, Division 33, Title 16, California Code of  
Regulations.

**SPECIFIC PURPOSE OF REGULATORY PROPOSAL:**

The Bureau of Automotive Repair (BAR or Bureau) is proposing the following amendments to existing regulations:

- I. Update Consumer Assistance Program (CAP) administration terms.
- II. Modify the Consumer Assistance Program Repair Assistance (RA) option and Vehicle Retirement (VR) option eligibility requirements. This update will permit participation of vehicle owners whose vehicle registration has not had a significant lapse (more than 120 days) during the 24 months prior to the registration expiration date, and has not been expired for more than 120 days at the time of application.
- III. Align RA and VR eligibility requirements to eliminate consumer confusion and achieve application processing efficiencies.

The proposed action will make the following changes to existing regulation:

1. Amend Section 3394.2 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:
  - a. Move “contracts with dismantlers,” and add “agreements with” and “holding valid STAR certification.”

These modifications are necessary to clarify the types of binding arrangements made between BAR and its service providers, and the type

of test-and-repair station authorized to provide CAP services to consumers.

- b. Add Health and Safety Code section 44014.2 and 44062.3 as reference citations.

Section 44014.2 identifies the section of law that establishes BAR's authority to certify voluntarily participating Smog Check stations to perform test-and-repair functions on CAP vehicles and the type of binding arrangement that BAR may enter into with these stations.

Section 44062.3 identifies vehicle retirement participation criteria, minimum incentive amounts, and the type of binding arrangement that BAR may enter into with a vehicle dismantler.

2. Amend Section 3394.3 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. In subsection (b), add "holding valid STAR certification and," and remove "contract" and replace with "an agreement."

These amendments are necessary to clarify the type of binding arrangement made between BAR and stations performing CAP repairs and the type of test-and-repair station authorized to perform CAP repairs.

- b. Add Health and Safety Code section 44062.3 as an authority citation and sections 44014.2 and 44062.3 as reference citations.

Section 44014.2 identifies the section of law that establishes BAR's authority to certify voluntarily participating smog check stations to perform test-and-repair functions on CAP vehicles and the type of binding arrangement that BAR may enter into with these stations.

Section 44062.3 identifies vehicle retirement participation criteria, minimum incentive amounts, and the type of binding arrangement that BAR may enter into with a vehicle dismantler.

3. Amend Section 3394.4 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:

- a. Remove "a person must meet" and add "must be met" in subsection (a).

This is an editorial change that is necessary because it better clarifies that the paragraphs under subsection (a) do not apply only to a person.

- b. Add "the applicant must" to paragraph (a) (1).

This addition is necessary because it better clarifies that the applicant and the vehicle's registered owner must be the same person.

- c. Remove paragraph (a) (2).

Text from this paragraph will be restated in new subparagraph (a) (5) (B) of this section as described below.

- d. Replace "vehicle owner has" with "applicant must [not] have" in subsection (a) (3) and renumber to (a) (2).

This editorial change is necessary because it ties the necessity of the applicant being the vehicle's registered owner with the stipulation that the applicant (vehicle owner) not have previously participated in CAP's RA option with the same vehicle.

This paragraph is renumbered due to the removal of paragraph (a) (2) as noted above.

- e. Add "the applicant must" to paragraph (a) (4) and renumber to (a) (3).

This addition is necessary because it clarifies that the household income requirement pertains to the applicant.

This paragraph is renumbered due to the renumbering of paragraph (a) (4) to (a) (3) as noted above.

- f. Add "the applicant must" to paragraph (a) (5) and renumber to (a) (4).

This addition is necessary because it clarifies that the responsibility of paying for emissions-related testing and diagnosing are the responsibility of the applicant.

This paragraph is renumbered due to the renumbering of paragraph (a) (5) to (a) (4) as noted above.

- g. Remove paragraph (a) (6).

Text from this paragraph will be reincorporated in new subparagraph (a) (5) (A) of this section as described below.

- h. Add new paragraph (a) (5) to read, "At the time of application, the vehicle must:"

This new text is necessary because it introduces the beginning of the RA option's vehicle participation requirements and specifies that the vehicle must meet the requirements as of the date of application.

- i. Add new subparagraph (a) (5) (A) to read, "Have failed its biennial Smog Check inspection. Aborted, manual mode, and training mode tests do not qualify."

This vehicle requirement is reincorporated from previously removed paragraph (a) (6).

- j. Add new subparagraph (a) (5) (B) to read, "Be currently registered with the Department of Motor Vehicles with a valid and unexpired registration sticker, or have all fees paid to the Department of Motor Vehicles and not have a registration that has been expired more than 120 days."

New subparagraph (a) (5) (B) is substantially similar to previously removed paragraph (a) (2), but provides low-income consumers, who may be unable to register their vehicle due to a failed Smog Check inspection, some flexibility in maintaining eligibility for state assistance.

Additionally, these changes are necessary because BAR has referenced the validity of the vehicle registration sticker to clarify the requirement for consumers who may not be familiar with how the vehicle registration process works. By assisting more low-income vehicle owners to repair their vehicles and bring them into compliance with applicable emissions standards, the RA option of CAP will help to reduce the number of vehicles operated on California's streets and highways with excessive emissions. Repairing these non-complying vehicles that might otherwise continue to be driven without being registered, will contribute to improvements in California's air quality and assist in meeting federal clean air goals.

- k. Add new subparagraph (a) (5) (C) to read, "Have been continuously registered in California with the Department of Motor Vehicles without substantial lapse during the two consecutive years preceding the current registration expiration date, such that it has not experienced breaks in registration totaling more than 120 days."

This subparagraph is necessary because it will ensure that vehicles being repaired have a measurable impact on air quality based on vehicle usage as determined by past registration history. This addition is also necessary to reasonably, ensure that the reductions in air pollution resulting from RA are real. Additionally, this subparagraph will provide low-income consumers who may have allowed their vehicle's registration to lapse for any other reason some flexibility in fulfilling the eligibility requirements

to receive state assistance in meeting the mandates of the Smog Check Program. Further, allowing for greater participation will directly result in a reduction of ozone depleting carbon-based emissions. Lastly, this addition comports RA's eligibility requirement with that of VR to alleviate confusion on the part of the consumer.

- l. Remove "a person must meet" and add "must be met" in subsection (b).

This is an editorial change that is necessary because it better clarifies that the paragraphs under subsection (b) do not apply only to a person.

- m. Add "the applicant must" to paragraph (b) (1), and remove "Smog Check" and "preceding."

The added text is necessary because it defines who must meet the requirement. "Smog Check" is removed because it is not part of CAP's title while "preceding" is removed because the 12-month period logically occurs prior to submittal of an application for retirement.

- n. Add "the applicant must" to paragraph (b) (3).

This addition is necessary because it clarifies that the applicant and the vehicle's registered owner must be the same person.

- o. Add "applicant" to paragraphs (b) (4) and (b) (5), remove "vehicle owner," and replace (4) with (3).

The addition of "applicant" is necessary because it makes consistent the use of "applicant" in place of "vehicle owner". The renumbering of the referenced paragraph is necessitated by the renumbering of subsection (a) (4) to (a) (3) as noted above.

- p. Remove subsection (b) (6).

Text from this subsection will be reincorporated in new subparagraph (b) (6) (C) of this section as described below.

- q. Renumber paragraph (b) (7) to (b) (6).

Renumbering is necessitated by the removal of (b) (6) as noted above.

- r. Replace "be currently registered with the Department of Motor Vehicles: or," with "have failed its most recent Smog Check inspection for causes other than an ignition timing adjustment or a non-functional gas cap. Aborted, manual mode, and training mode tests do not qualify" in subparagraph (b) (7) (A).

Replaced text is restated in subparagraph (b) (7) (A) and added text is repositioned from paragraph (b) (9).

- s. Replace “be currently operating under a repair cost waiver or economic hardship extension issued by the Bureau of Automotive Repair; or,” with “be a passenger vehicle, truck, sports utility vehicle (SUV), or van with a gross vehicle rating of 10,000 pounds or less” in subparagraph (b) (7) (B).

This change is necessary because a vehicle does not operate on a repair cost waiver or economic hardship extension. Repair cost waivers and economic hardship extensions are issued to consumers in lieu of a Smog Check certificate and are submitted to the Department of Motor Vehicles to complete the registration renewal process<sup>1</sup>. Also, any minor lapse in registration, as defined in proposed paragraph (b) (6) (D), would not be grounds for denial of CAP VR services. Lastly, the added text is being reincorporated from paragraph (b) (10).

- t. Replace “be currently operating under a Temporary Operating Permit issued by the Department of Motor Vehicles” with “be currently registered with the Department of Motor Vehicles with a valid and unexpired registration sticker, or have all fees paid to the Department of Motor Vehicles and not have a registration that has been expired more than 120 days” in subparagraph (b) (7) (C).

This change is necessary because Temporary Operating Permits extend the validity of a registration by no more than 60 days<sup>2</sup>. This proposal would allow for participation up to 120 days past expiration, or 60 days longer than provided for by a Temporary Operating Permit. The requirement that the vehicle registration fees be paid to the Department of Motor Vehicles is reincorporated from removed paragraph (b) (6). Additionally, pursuant to Health and Safety Code section 44062.3, “the owner of a motor vehicle that has been registered without substantial lapse, as defined by the department...may retire the vehicle from operation.” Further, BAR has determined that allowing consumers 120-days past the vehicle’s registration expiration date affords consumers ample time to determine whether or not to retire the vehicle. Add subparagraph (b) (6) (D) to read, “have been continuously registered in California with the Department of Motor Vehicles without substantial lapse during the two consecutive years preceding the current registration expiration date, such that it has not experienced breaks in registration totaling more than 120 days.”

Pursuant to Health and Safety Code section 44062.3, “the owner of a motor vehicle that has been registered without substantial lapse, as defined by the department...may retire the vehicle from operation.” This

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<sup>1</sup> Sections 44015 and 44060 of the Health and Safety Code

<sup>2</sup> Section 4156 of the Vehicle Code

subparagraph seeks to define that criterion by requiring that the continuous registration period occur during the two years immediately preceding submittal of an application for retirement under CAP. Additionally, this subparagraph will provide low-income consumers who may have allowed their vehicle's registration to temporarily lapse during that two-year period some flexibility in fulfilling CAP's VR eligibility requirements by defining that a break or lapse in registration in excess of 120 days constitutes an unacceptable break in registration. Further, the proposed text is substantially similar to removed subparagraph (b) (8) (C). Lastly, allowing for greater participation will increase the number of individuals eligible to receive state reimbursement for voluntarily retiring their high-polluting vehicle. More vehicles retired directly results in a reduction of ozone depleting carbon-based emissions.

- u. Remove paragraphs (b) (8), (b) (9), and (b) (10).

The provisions of these paragraphs were either incorporated into paragraph (b) (6) and its subparagraphs or replaced by them as specified.

- v. Remove paragraph (b) (11).

Text from this section is necessary because it will be reincorporated into new paragraph (8) as described below.

- w. Renumber paragraph (b) (12) to (b) (7) and add, "after approval of an application and prior to being accepted for retirement, the vehicle must."

The added text is necessary because it better clarifies, for consumers, that approval of an application to participate in CAP's VR option is not the final step in the process prior to actual retirement of the vehicle.

The renumbering of this paragraph is necessary because of the renumbering of paragraph (b) (7) to (b) (6) and the removal of paragraphs (b) (8), (b) (9), (b) (10), and (b) (11).

- x. Add new paragraph (b) (8).

This paragraph and its subparagraphs are substantially similar to removed paragraph (b) (11). The addition of "after approval of an application and prior to being accepted for retirement, the vehicle must" is necessary because it clarifies for consumers that approval of an application to participate in CAP's VR option is not the final step in the process prior to actual retirement of the vehicle.

- y. Add Health and Safety Code section 44062.3 as an authority citation and sections 44014.2 and 44062.3 as reference citations.

Section 44014.2 identifies the section of law that establishes BAR's authority to certify voluntarily participating smog check stations to perform test-and-repair functions on CAP vehicles and the type of binding arrangement that BAR may enter into with these stations.

Section 44062.3 identifies vehicle retirement participation criteria, minimum incentive amounts, and the type of binding arrangement that BAR may enter into with a vehicle dismantler.

- z. Other minor conforming, grammatical, and editorial changes that have no regulatory effect (e.g., changing "a" for "the").

### **FACTUAL BASIS**

The Bureau, within the Department of Consumer Affairs, is the State agency charged with administration and implementation of the Smog Check Program (Program). The Program is designed to reduce emissions from mobile sources by identifying for repair or retirement vehicles that exceed specific emissions standards. A consumer who chooses to keep a vehicle that has failed its Smog Check inspection must have the vehicle repaired and subsequently obtain a passing result on another Smog Check inspection in order to complete the Department of Motor Vehicle's vehicle registration renewal process.

In order to assist consumers in complying with the provisions of the Program, the Bureau is charged with administering the Consumer Assistance Program (CAP). Through CAP, a consumer can retire a qualified vehicle at any time and for any reason for either \$1,000 or \$1,500, if they meet income eligibility requirements. If a consumer who meets CAP's income requirements chooses to repair a vehicle after it fails a biennial Smog Check inspection, they can receive up to \$500 toward emissions-related repairs.

The proposed actions described in this Initial Statement of Reasons (ISOR) are necessary because BAR's proposed changes will expand CAP assistance option eligibility which will increase consumer participation. Increased consumer participation will directly lead to increased revenue for businesses, lower out-of-pocket expenses for eligible consumers, and a 136 percent increase in emissions reductions.

### **UNDERLYING DATA:**

Technical, theoretical, or empirical studies or reports relied upon:

1. California Air Resources Board and American Lung Association, *Recent Research Findings: Health Effects of Particulate Matter and Ozone Air Pollution*, November 2007.

2. 2010 RAND Health Foundation report, *The Impact of Air Quality on Hospital Spending* (Executive Summary), written by John A. Romley, Andrew Hackbarth, and Dana P. Goldman, sponsored by The William and Flora Hewlett Foundation.
3. 2010 Health-Effects Institute report, *Traffic-Related Air Pollution: A Critical Review of the Literature on Emissions, Exposure, and Health Effects* (Executive Summary).
4. 2013 Consumer Assistance Program report, *High Polluter Repair and Removal Account: Consumer Participation and Program Expenditures Summary*
5. United States Environmental Protection Agency, *Estimating the National Public Health Burden Associated with Exposure to Ambient PM2.5 and Ozone*.

### **ECONOMIC IMPACT ASSESSMENT:**

#### **EFFECT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS OR BUSINESSES:**

BAR has made an initial determination that the proposed regulatory action will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of jobs or businesses in the State of California.

This determination was made because the proposed amendments seek to increase consumer participation and to align program component requirements, and do not necessarily present new business opportunities as described below.

Automotive repair dealers that have entered into an agreement with CAP to provide consumers with repair assistance services would, statewide, see an average of less than 15 additional vehicles annually based on an estimated annual increase in participation from 7,999 to 25,424. BAR does not believe that this increase would be sufficient enough to necessitate expansion in operations or work force.

Dismantling contracts are competitively bid on a three-year cycle. In July 2013, dismantlers entered into contracts with CAP based on a statewide retirement capacity of 20,200 vehicles. BAR's analysis estimates that these regulations will increase vehicle retirements from 7,536 to 14,757 annually, therefore these regulations do not provide any additional opportunities for dismantler expansion of operations or workforce.

Additionally, because these regulations would increase participation in CAP's programs, BAR has determined that the elimination of affected jobs or businesses would be inconsistent with the projected increase in business revenues resulting from the actions proposed in this document.

#### **IMPACT ON WORKER SAFETY:**

This regulatory proposal benefit does not affect worker safety because it does not alter

any work place safety guidelines established in any state or federal statute or regulation.

## **ENVIRONMENTAL IMPACT AND IMPACT ON THE HEALTH AND WELFARE OF CALIFORNIA CITIZENS:**

BAR has made an initial determination that the proposed regulatory action will have the following benefits to the health and welfare of California residents and the State's environment as follows:

Expanding CAP assistance option eligibility will increase consumer participation, which will directly lead to increased revenue for businesses, lower out-of-pocket expenses for eligible consumers, and a 136 percent increase in emissions reductions.

Recent studies, such as the 2010 RAND Health Foundation report, *The Impact of Air Quality on Hospital Spending*, concluded that, "Meeting federal clean air standards would have prevented an estimated 29,808 hospital admissions and ER visits throughout California over 2005 - 2007... Failing to meet federal clean air standards cost health care purchasers/payers \$193,100,184 for hospital care alone. In other words, improved air quality would have reduced total spending on hospital care by \$193,100,184 in total."

Additionally, an ARB study, *Health Effects of Particulate Matter and Ozone Air Pollution*, November 2007,<sup>3</sup> identified significant health effects attributable to high levels of ozone. Polluting vehicles produce hydrocarbons and oxides of nitrogen which combine in the presence of sunlight to form bad ozone. The report stated that, "Ozone is a powerful oxidant that can damage the respiratory tract, causing inflammation and irritation, and induces symptoms such as coughing, chest tightness, shortness of breath, worsening of asthma symptoms, and even death. Ozone in sufficient doses increases the permeability of lung cells, rendering them more susceptible to toxins and microorganisms. The greatest risk is to those who are more active outdoors during smoggy periods, such as children, athletes, and outdoor workers. Exposure to levels of ozone above the current ambient air quality standard leads to lung inflammation and lung tissue damage, and a reduction in the amount of air inhaled into the lungs. Recent evidence has, for the first time, linked the onset of asthma to exposure to elevated ozone levels in exercising children (McConnell, 2002). These levels of ozone also reduce crop and timber yields, damage native plants, and damage materials such as rubber, paints, fabric, and plastics."

Further, a study by the USEPA, *Estimating the National Public Health Burden Associated with Exposure to Ambient PM2.5 and Ozone*, found that, "Ground-level ozone (O<sub>3</sub>) and fine particulate matter (PM<sub>2.5</sub>) are associated with increased risk of mortality... Using PM<sub>2.5</sub> and O<sub>3</sub> mortality risk coefficients drawn from the long-term American Cancer Society (ACS) cohort study and National Mortality and Morbidity Air Pollution Study (NMMAPS), respectively, we estimate 130,000 PM<sub>2.5</sub>-related deaths and 4,700 ozone-related deaths to result from 2005 air quality levels. Among populations aged 65–99, we estimate nearly 1.1 million life years lost from PM<sub>2.5</sub> exposure and approximately

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<sup>3</sup> [http://www.arb.ca.gov/research/health/fs/pm\\_ozone-fs.pdf](http://www.arb.ca.gov/research/health/fs/pm_ozone-fs.pdf)

36,000 life years lost from ozone exposure. Among the 10 most populous counties, the percentage of deaths attributable to PM2.5 and ozone ranges from 3.5% in San Jose to 10% in Los Angeles. These results show that despite significant improvements in air quality in recent decades, recent levels of PM2.5 and ozone still pose a nontrivial risk to public health.”

These recent studies suggest that, although California air quality has improved, additional reductions to smog-forming pollutants are necessary. Revising CAP’s eligibility requirements will help ensure that an additional 17,425 vehicles will receive emissions-related repairs in order to pass a Smog Check inspection and that an additional 7,221 vehicles will be retired. Further, these increases in RA and VR participation will increase the annual emissions reductions of Carbon Monoxide, Oxides of Nitrogen, and Hydrocarbons by 736.9, 68.6, and 60 tons respectively.

**FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE ON WHICH THE AGENCY RELIED TO SUPPORT AN INITIAL DETERMINATION THAT THE PROPOSED ACTIONS WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESSES:**

This proposal better allocates state resources appropriated to helping consumers with emissions-related repairs or retirements thereby improving air quality and reducing overall consumer costs. Consumers and businesses will see an increased benefit through increased participation over the lifetime of this regulation.

Because the proposed action seeks to increase consumer participation, businesses will not be adversely affected but will instead experience increases in revenues as a result of more consumers seeking to retire or repair their high-polluting vehicles. Therefore, the proposed regulations will not have any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**SPECIFIC TECHNOLOGIES OR EQUIPMENT:**

This regulation does not mandate the use of any specific technologies or equipment.

**CONSIDERATION OF ALTERNATIVES:**

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of BAR would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Set forth below is the alternative that was considered and the reason for its rejection:

1. BAR considered taking no action. However, data suggests that the program has seen a dramatic decrease in participation due, in great part, to overly restrictive application requirements. Further, taking no action would result in the current trend of consumers wishing to participate being turned away due to expired registrations. Lastly, this alternative is contrary to CAP's mandate of alleviating the disproportionate burden of compliance with the State's Smog Check Program for low-income consumers, many of whom may have difficulty repairing their vehicle to bring its emissions to within the tolerance levels of the State's Smog Check Program and thus potentially impacting their ability to register the vehicle.